

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Toby Baker, *Executive Director*



Vic McWherter, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 19, 2018

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **RIO GRANDE LNG, LLC**  
**TCEQ DOCKET NO. 2018-1304-AIR**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur".

Garrett Arthur  
OPIC Senior Attorney

cc: Service List



**DOCKET NO. 2018-1304-AIR**

APPLICATION BY	§	BEFORE THE
RIO GRANDE LNG, LLC	§	
AIR QUALITY PERMIT NO.	§	TEXAS COMMISSION ON
140792, PSDTX1498, &	§	
GHGPSDTX158	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO HEARING REQUESTS AND  
REQUEST FOR RECONSIDERATION**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing requests and the request for reconsideration in the above-captioned matter.

**I. Background**

On May 18, 2016, Rio Grande LNG, LLC (Applicant) applied to the TCEQ for a new air quality permit. Applicant is proposing to build a natural gas liquefaction facility and a liquefied natural gas (LNG) export terminal in Cameron County. The project would also include a pipeline compressor station owned and operated by the Rio Bravo Pipeline Company, LLC. The proposed location is in Brownsville on State Highway 48, approximately 15.2 miles to the east-northeast of the intersection with State Highway 4. The facility's southern border would be the Brownsville Ship Channel.

The application was declared administratively complete on June 3, 2016. On June 22, 2016, the first newspaper notice was published in the *Brownsville*

*Herald* and *El nuevo Herald*. On February 22, 2018, the second newspaper notice, a combined notice, was published in the same newspapers. On March 8, 2018, TCEQ held a public meeting in Brownsville, and the public comment period closed March 26, 2018. The Executive Director's (ED) Response to Comments (RTC) was mailed September 26, 2018, and the deadline to submit contested case hearing requests and requests for reconsideration (RFR) was October 26, 2018.

TCEQ timely received hearing requests from: City of Port Isabel, Town of Laguna Vista, Save RGV from LNG, Shrimpers and Fishermen of the RGV, Vecinos Para el Bienestar de la Comunidad Costera, Rosemary Breedlove, Marianne Poythress, and Joyce Marie Hamilton. Also, TCEQ timely received a request for reconsideration from John Young. For the reasons stated herein, OPIC respectfully recommends the Commission grant the hearing requests of Port Isabel, Laguna Vista, Save RGV from LNG, Shrimpers and Fishermen of the RGV, and Marianne Poythress.

## **II. Applicable Law**

### **A. Hearing Requests**

This application was filed on or after September 1, 2015, and is therefore subject to Senate Bill 709, Tex. S.B. 709, 84<sup>th</sup> Leg., R.S. (2015) (SB 709). For SB 709 applications, Texas Water Code Section 5.115(a)(a-1)(2)(B) provides the Commission may not find that a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the application. Texas

Government Code Section 2003.047(e-1) further provides that each issue referred by the Commission must have been raised by an affected person in a timely comment filed by that affected person. The Commission's Chapter 55 rules implement these statutory requirements and other provisions of SB 709.

Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and

- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an “affected person” is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

## **B. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

## **III. Analysis of Hearing Requests**

### **A. Whether the requestors are affected persons**

Before we offer our analysis of the hearing requestors, OPIC would like to note that there are no distance restrictions imposed by law on whom may be considered an affected person in this matter. As a Prevention of Significant Deterioration (PSD) site, Rio Grande LNG would be a significant source of air emissions, and among the air quality authorizations issued by TCEQ, PSD permits are reserved for the largest emitters of criteria pollutants. The emission of air contaminants at PSD levels warrants the consideration of potential affected person status at further distances from the site.

#### *City of Port Isabel*

Jared Hockema, City Manager, timely submitted comments and hearing requests for the City of Port Isabel. According to the City, the proposed site is in or near Port Isabel's extra-territorial jurisdiction and two miles or less from



the city limits and city property. The proximity of the site to Port Isabel is confirmed by the ED's map.

Port Isabel is concerned about significant degradation of air quality, and states that under certain meteorological conditions, Cameron and Hidalgo Counties already fail to meet air quality standards. Port Isabel notes that the Rio Grande LNG project is connected or related to other projects and developments, and therefore cumulative impacts should be analyzed. The City notes the proximity of the site to residences, schools, recreational and cultural facilities, and places of worship, and is concerned about potential adverse effects on public health and welfare due to emissions. The City states that the prevailing wind puts the facility upwind of sensitive receptors, including children and the elderly. Port Isabel is concerned that dust from the site may harm residents and damage public property. Port Isabel states that the project site is next to the Bahia Grande Unit of the Laguna Atascosa National Wildlife Refuge, which provides sensitive habitat for endangered species. Also, the Refuge is economically important to tourism and commercial fishing, and Native American artifacts are present there. The City urges TCEQ to consider adverse impacts on wildlife and outdoor recreation. Finally, the City is concerned about noise emissions related to the project.

Under 30 TAC § 55.203(c)(7), Port Isabel can be an affected person based on its statutory authority over or interest in the issues relevant to the application (emphasis added). The Texas Health and Safety Code provides that the governing body of a municipality may enforce any law that is reasonably

necessary to protect the public health.<sup>1</sup> It further states, “[A] municipality has the powers and rights as are otherwise vested by law in the municipality to ... abate a nuisance ....”<sup>2</sup> In addition to its statutory authority over issues relevant to this application, Port Isabel is seeking to protect its economic interests, including city-owned property and facilities which could be negatively impacted by the proposed facility. Also, the City is seeking to protect public health and welfare by protecting participants in its programs and its employees from adverse health effects caused by air pollution. Port Isabel’s claimed interests are protected by the law under which this application is being considered, and a reasonable relationship exists between the City’s claimed interests and the regulated activity. Finally, Port Isabel’s interests as a governmental entity are not common to members of the general public. OPIC finds that the City of Port Isabel has a justiciable interest in this matter, that interest is affected by the application, and the City therefore qualifies as an affected person.

#### *Town of Laguna Vista*

Rolando Vela, City Manager, timely submitted comments and a hearing request for the Town of Laguna Vista. According to Google mapping, Laguna Vista’s city limits are about 4.5 miles from the closest part of the proposed site. Laguna Vista is concerned about significant degradation of air quality, and states that under certain meteorological conditions, Cameron and Hidalgo Counties already fail to meet air quality standards. Laguna Vista notes that the

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<sup>1</sup> TEX. HEALTH & SAFETY CODE § 121.003(a).

<sup>2</sup> TEX. HEALTH & SAFETY CODE § 382.113(a)(1).

Rio Grande LNG project is connected or related to other projects and developments, and therefore cumulative impacts should be analyzed. The Town notes the proximity of the site to residences, schools, recreational and cultural facilities, and places of worship, and is concerned about potential adverse effects on public health and welfare due to emissions. The Town states that the prevailing wind places the project upwind of sensitive receptors, including children and the elderly. Laguna Vista is concerned that dust from the site may damage public property. Laguna Vista states that the project site is adjacent to the Bahia Grande Unit of the Laguna Atascosa National Wildlife Refuge, which provides sensitive habitat for endangered species. Also, the Refuge is economically important to tourism and commercial fishing, and Native American artifacts are present there. The Town states that it is currently working with Cameron County to build an ecosystem center next to the Refuge and urges TCEQ to consider adverse impacts on wildlife and outdoor recreation. Finally, the Town is concerned about noise emissions related to the project.

Under 30 TAC § 55.203(c)(7), Laguna Vista can be an affected person based on its statutory authority over or interest in the issues relevant to the application (emphasis added). The Texas Health and Safety Code provides that the governing body of a municipality may enforce any law that is reasonably necessary to protect the public health.<sup>3</sup> It further states, “[A] municipality has the powers and rights as are otherwise vested by law in the municipality to ...

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<sup>3</sup> TEX. HEALTH & SAFETY CODE § 121.003(a).

abate a nuisance ....”<sup>4</sup> In addition to its statutory authority over issues relevant to this application, Laguna Vista is seeking to protect its economic interests, and the planned ecosystem center qualifies as an economic interest which could be negatively impacted by the proposed facility. Also, the Town is seeking to protect public health and welfare by protecting participants in its programs and its employees from adverse health effects caused by air pollution. Laguna Vista’s claimed interests are protected by the law under which this application is being considered, and a reasonable relationship exists between the Town’s claimed interests and the regulated activity. Finally, Laguna Vista’s interests as a governmental entity are not common to members of the general public. OPIC finds that the Town of Laguna Vista has a justiciable interest in this matter, that interest is affected by the application, and the Town therefore qualifies as an affected person.

*Save RGV from LNG*

Charles Irvine timely submitted comments and hearing requests on behalf of the group Save RGV from LNG (Save RGV). Members of Save RGV include Ed McBride, Flora Gunderson, Marianne Poythress, Edna Goette, and Carolyn Ball. Save RGV states that it was specifically created to oppose the development of LNG facilities in the Rio Grande Valley region, to organize with the community regarding LNG development and associated impacts to the region, and to engage in efforts to protect public health, the environment, and

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<sup>4</sup> TEX. HEALTH & SAFETY CODE § 382.113(a)(1).

local tourism from adverse impacts related to LNG facilities. Save RGV further states that the interests it seeks to protect include aesthetic, environmental, economic interests, and the public health of communities in the Rio Grande Valley region.

To be an affected person, Save RGV must identify, by name and physical address, one or more members of the group who would have standing to request a hearing in their own right.<sup>5</sup> Save RGV has identified multiple members who reside within 6 miles of the proposed site, but only one needs to qualify as an affected person to provide standing for the group. OPIC will therefore focus its affected person analysis on the closest member, Flora Gunderson.

Save RGV states that Flora Gunderson resides approximately 2.3 miles from the eastern edge of the proposed facility. Her location is confirmed by the ED's map. Save RGV states that the proposed facility endangers Mrs. Gunderson's use of property and way of life. According to Save RGV, the facility's emission of air contaminants will cause ground-level ozone, impact her health and welfare, and impact the surrounding environment that she regularly uses and enjoys. Save RGV also states that because of her location, she will be particularly affected by any emergency events or upsets.

Mrs. Gunderson's proximity to the proposed facility, when combined with her concerns regarding air quality, use of property, and health effects, would give her a personal justiciable interest in this matter. Her proximity also shows

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<sup>5</sup> 30 TAC § 55.205(b)(2).

that she could be impacted in a manner not common to the general public and distinguishes her personal justiciable interest from an interest common to the general public. Further, the § 55.203 affected person determination factors indicate that Mrs. Gunderson would qualify as an affected person. First, her concerns about air quality, use of property, and health effects are interests protected by the law under which this application is being considered. Second, a reasonable relationship exists between those interests and the regulation of air contaminants. Finally, the proximity of Mrs. Gunderson to the proposed facility increases the likelihood of impacts to her health, safety, and use of property. OPIC finds that Save RGV member Flora Gunderson would qualify as an affected person in this matter.

Save RGV has satisfied the first two requirements for group standing by timely submitting comments and identifying a member who would otherwise have standing to request a hearing in her own right.<sup>6</sup> Because the interests Save RGV seeks to protect are germane to its purpose and neither the claim asserted nor the relief requested requires the participation of individual members, Save RGV has also satisfied the last two requirements for group standing.<sup>7</sup> Save RGV from LNG has met all four requirements for group standing in this matter and therefore qualifies as an affected person.

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<sup>6</sup> 30 TAC § 55.205(b).

<sup>7</sup> *Id.*

*Shrimpers and Fishermen of the RGV*

Claire Krebs from the University of Texas Environmental Law Clinic and Rachel Zummo with Texas Rio Grande Legal Aid timely submitted comments and a hearing request on behalf of Shrimpers and Fishermen of the RGV (SFRGV). The SFRGV group is an unincorporated nonprofit association of individuals who live, work, and recreate around the Brownsville Ship Channel. SFRGV states that its goal is to protect the natural environment in and around the Brownsville Ship Channel, including outdoor air quality, and the health, safety, and livelihood of its members. SFRGV asserts that because members depend on the surrounding area for their livelihood, they are affected more than the general public. Also, SFRGV asserts that their interest in the permit and proceeding is germane to the group's purposes.

To be an affected person, SFRGV must identify, by name and physical address, one or more members of the group who would have standing to request a hearing in their own right.<sup>8</sup> SFRGV has identified Lela Burnell. Lela Burnell resides in Los Fresnos, within 18 miles of the proposed facility site. According to SFRGV, Ms. Burnell's family owns the Shrimp Outlet in Brownsville, where she works and docks her boats. SFRGV states that the Shrimp Outlet business is on the Brownsville Ship Channel, near the Rio Bravo Pipeline route, and within five miles of the proposed facility site. SFRGV further states that the crews on Shrimp Outlet's boats travel along the ship channel past the proposed facility to fish and to return to dock.

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<sup>8</sup> 30 TAC § 55.205(b)(2).

Ms. Burnell is concerned that the facility's emissions will negatively impact her and her employees' health, and their safety will be threatened by the risk of accidents and explosions. Ms. Burnell is also concerned about negative economic impacts. Specifically, she is concerned that the proposed facility will harm her shrimp business by reducing the number of people who come in to buy shrimp. Further, she is concerned that increased air pollution and possible deposition of pollutants will cause current customers to distrust the quality of local shrimp. SFRGV asserts that because Ms. Burnell's health, business, and livelihood will be impacted by the proposed facility, she is more impacted than the general public.

The proximity of Ms. Burnell's business to the proposed facility, when combined with her concerns regarding air quality, health effects, and economic harm, would give her a personal justiciable interest in this matter. The proximity and nature of her business also show that she could be impacted in a manner not common to the general public and distinguish her personal justiciable interest from an interest common to the general public. Further, the § 55.203 affected person determination factors indicate that Ms. Burnell would qualify as an affected person. First, her concerns about air quality, health effects, and economic harm are interests protected by the law under which this application is being considered. Second, a reasonable relationship exists between those interests and the regulation of air contaminants. Finally, the proximity of Ms. Burnell's Shrimp Outlet business to the proposed facility increases the likelihood of economic harm and impacts to her health, safety,



and use of property. OPIC finds that SFRGV member Lela Burnell would qualify as an affected person in this matter.

SFRGV has satisfied the first two requirements for group standing by timely submitting comments and identifying a member who would otherwise have standing to request a hearing in her own right.<sup>9</sup> Because the interests SFRGV seeks to protect are germane to its purpose, and neither the claim asserted nor the relief requested requires the participation of individual members, SFRGV has also satisfied the last two requirements for group standing.<sup>10</sup> Shrimpers and Fishermen of the RGV has met all four requirements for group standing in this matter and therefore qualifies as an affected person.

*Marianne Poythress*

According to the map prepared by the ED, Marianne Poythress resides approximately 4.5 miles from the closest part of the proposed site. Ms. Poythress states that the area surrounding the proposed site is delicate, and schools and students are directly downwind from the site. Because of their downwind locations, she is concerned about the populations of Port Isabel, Laguna Heights, and Laguna Vista, and the unique wildlife in the Laguna Atascosa National Wildlife Refuge. Also, Ms. Poythress is concerned about health effects, and specifically, her respiratory ailments. Finally, she is concerned about the impact on the local tourism economy.

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<sup>9</sup> 30 TAC § 55.205(b).

<sup>10</sup> *Id.*

Ms. Poythress' relative proximity to the proposed facility, when combined with the volume of potential emissions and her concerns regarding respiratory ailment health effects, gives her a personal justiciable interest in this matter. Her proximity also shows that she could be impacted in a manner not common to the general public and distinguishes her personal justiciable interest from an interest common to the general public. Further, the § 55.203 affected person determination factors indicate that Ms. Poythress qualifies as an affected person. First, her concern about health effects is an interest protected by the law under which this application is being considered. Second, a reasonable relationship exists between that interest and the regulation of air contaminants. Finally, the proximity of Ms. Poythress to the proposed facility increases the likelihood of impacts to her health. OPIC finds that Marianne Poythress qualifies as an affected person in this matter.

*Vecinos Para el Bienestar de la Comunidad Costera*

Claire Krebs from the University of Texas Environmental Law Clinic and Rachel Zummo with Texas Rio Grande Legal Aid timely submitted comments and a hearing request on behalf of Vecinos Para el Bienestar de la Comunidad Costera (VBCC). VBCC states that it is an unincorporated nonprofit association made up of community members living in and around Laguna Heights. VBCC states that its mission is to protect and improve the health, standard of living, and economic development of the coastal community in the Rio Grande Valley of South Texas. According to VBCC, the group is mainly low-income Hispanic

families whose livelihoods depend on existing local industries that rely on environmental quality, such as fishing and hospitality. VBCC states that its goals include improving local outdoor air quality and protecting the health and safety of its members. Finally, VBCC asserts that its stated interests in the permit are germane to its purposes.

To be an affected person, VBCC must identify, by name and physical address, one or more members of the group who would have standing to request a hearing in their own right.<sup>11</sup> VBCC has identified Erika Avila. Erika Avila resides in Laguna Vista, and VBCC states that she is approximately 5.5 miles from the proposed site. According to the ED's map, Ms. Avila may be slightly closer than 5.5 miles. As stated by VBCC, Ms. Avila takes State Park Road 100 to work and travels through Port Isabel, about three miles from the site, on a daily basis. VBCC further states that Ms. Avila uses Highway 48 for weekly trips to Brownsville to buy groceries and do family activities, and Highway 48 passes directly by the facility site. VBCC asserts that because of the location of her home and because her work and personal needs require her to routinely come close to the proposed facility, Ms. Avila is more affected than the general public. Ms. Avila is concerned about the impacts of increased air pollutants and the risk of accidents and explosions from the proposed facility on her health and safety.

Though Ms. Avila may routinely drive close to the proposed site, this is likely true of many area residents because Highway 48 is a major thoroughfare

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<sup>11</sup> 30 TAC § 55.205(b)(2).

that connects the Port Isabel area to other parts of the Rio Grande Valley. OPIC finds that her driving routes do not distinguish her interest from interests common to the general public near Port Isabel. OPIC cannot find that Erika Avila would individually qualify as an affected person, and thus she does not provide standing for VBCC. However, because so much of the community has concerns similar to Ms. Avila's and VBCC's, OPIC is recommending a public interest hearing as further discussed below.

*Rosemary Breedlove*

Rosemary Breedlove currently lives in Denton, Texas. Because the proposed site is near Port Isabel schools, she is concerned about hazardous leaks creating an air pollution event. She is also concerned about leaks affecting fragile waterways and wildlife, and air pollution impacts on the Bahia Grande wetlands. Ms. Breedlove is concerned about the loss of fragile wildlife, fishing resources, jobs, and tourism. Finally, Ms. Breedlove states that her overriding issue is the potential for hazardous air pollution.

Ms. Breedlove's address in Denton is over 500 miles from the proposed site. At that distance, she lacks the proximity necessary to establish a personal justiciable interest which is distinct from interests common to the general public. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Further, the intervening distance diminishes any likelihood that the regulated activity will impact her health,

safety, or use of property. Therefore, OPIC finds that Rosemary Breedlove does not qualify as an affected person.

*Joyce Marie Hamilton*

Joyce Marie Hamilton's address is in Harlingen, and according to the map prepared by the ED, Ms. Hamilton resides about 32 miles from the proposed site. She is concerned about air pollution in Laguna Vista, Laguna Heights, Port Isabel schools, and the Laguna Atascosa National Wildlife Refuge. She is also concerned about health effects on residents, tourists, and visitors. Finally, Ms. Hamilton is concerned that endangered wildlife and the fragile ecosystem will be compromised.

Ms. Hamilton's residence in Harlingen is 32 miles from the proposed site. At that distance, she lacks the proximity necessary to establish a personal justiciable interest which is distinct from interests common to the general public. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Further, the intervening distance diminishes any likelihood that the regulated activity will impact her health, safety, or use of property. Therefore, OPIC finds that Joyce Marie Hamilton does not qualify as an affected person.

*The Public Interest Warrants Holding a Hearing*

Texas Clean Air Act Section 382.056(n) requires hearing requests to be considered under the procedures provided by Texas Water Code Sections 5.556 and 5.557. Texas Water Code Section 5.556(c) states the Commission may not

grant a request for contested case hearing unless the Commission determines the request was filed by an affected person. However, Texas Water Code Section 5.556(f) clarifies that “[t]his section does not preclude the Commission from holding a hearing if it determines the public interest warrants doing so.” If the Commission disagrees with OPIC’s analysis above regarding affected person status, OPIC recommends in the alternative that the Commission hold a hearing because the public interest warrants doing so.

The proposed facility site is uniquely located along the ship channel as well as along Highway 48, a main artery that connects the small coastal communities of Port Isabel, Laguna Vista, and Laguna Heights to Brownsville and the remainder of the Rio Grande Valley. Though OPIC found that certain hearing requestors such as Erika Avila, the group member identified by VBCC, did not state an interest distinguishable from the “general public,” the relevant consideration from a public interest perspective is that most of the general public within the Port Isabel area could be affected. Routine daily activities, fishing, shrimping, other work activities, and commuting in and around the Rio Grande Valley will require these particular citizens to be in very close proximity to facility operations. A review of maps of the area in conjunction with a reading of all hearing requests confirms this understanding. An evidentiary record developed through a contested case hearing would allow for a more fully informed Commission decision on this application. Such a record of decision would provide greater context for the community as it balances views on potential concerns and potential benefits associated with this project.

**B. Which issues raised in the hearing requests are disputed**

All of the issues raised in the hearing requests filed by affected persons are disputed.

**C. Whether the dispute involves questions of fact or of law**

All of the issues involve questions of fact.

**D. Whether the issues were raised during the public comment period**

All of the issues were raised during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in public comments which have been withdrawn**

None of the hearing requests are based on issues raised solely in public comments which have been withdrawn.

**F. Whether the issues are relevant and material to the decision on the application**

OPIC finds the following issues are relevant and material to the

Commission's decision on this application:

- Whether the proposed facility will emit significant amounts of pollutants that are dangerous to human health and the environment.
- Whether the permit is sufficiently protective of public health.
- Whether the application's best available control technology (BACT) analysis is flawed.
- Whether Applicant's elimination of selective catalytic reduction (SCR) as the control technology for nitrogen oxides (NO<sub>x</sub>) is justified.

- Whether Applicant's elimination of an oxidation catalyst as the control technology for carbon monoxide (CO) and volatile organic compounds (VOC) is justified.
- Whether Applicant's elimination of carbon capture storage as a control technology for greenhouse gases (GHG) is justified.
- Whether the application demonstrates that the anticipated emissions will not cause or contribute to an exceedance of the National Ambient Air Quality Standards (NAAQS) or applicable PSD increments.
- Whether Applicant's air quality analysis should include estimated emissions from the two other proposed LNG facilities and the proposed SpaceX facility.
- Whether air quality impacts of associated growth should be considered.
- Whether additional ecosystem, soil, and vegetation impacts to the shrimping and fishing industry should be considered.
- Whether the application and draft permit assume realistic emissions for the flares and thermal oxidizers.
- Whether Applicant has selected and the draft permit requires BACT for all sources, including gas turbines and thermal oxidizers.
- Whether Applicant's rejection of electrically driven compression is justified.
- Whether Applicant proposes to minimize VOC emissions from flares.
- Whether emissions from LNG tanker vessel loading operations have been properly estimated.
- Whether the BACT analysis and determination for component fugitives is adequate.
- Whether the application underestimates fugitive emissions.
- Whether the draft permit should include more rigorous leak detection and repair (LDAR) protocols and leakless components.
- Whether the draft permit provides for accurate monitoring of emissions.



SFRGV and VBCC have raised environmental justice concerns. Because the TCEQ receives federal funding, it must comply with Title VI of the Civil Rights Act of 1964. Furthermore, Executive Order 12898 addresses the environmental and human health conditions of minority communities and low-income communities and calls on agencies to make achieving environmental justice part of their mission. TCEQ has also made a policy commitment to address environmental equity by creating the agency's Environmental Equity Program. Information about this program may be found at: <https://www.tceq.texas.gov/agency/decisions/hearings/envequ.html>. The Environmental Equity Program aims to: help Texas citizens and neighborhood groups participate in decision-making and regulatory processes; serve as the TCEQ contact to address concerns about environmental injustice; and ensure that all people receive equal benefit from environmental regulations and protection. While this policy commitment is implemented through the Environmental Equality Program, there is no concrete guidance addressing how environmental equity is to be considered in the TCEQ permitting process. No TCEQ permitting rules address environmental equity issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposure to pollutants of minority and low-income populations, or the disparate economic, environmental, and health effects on minority and low-income populations. Therefore, the environmental justice issue cannot not be addressed in proceedings on this application and cannot be considered relevant and material to the Commission's decision on this application.

#### **IV. Analysis of Request for Reconsideration**

John Young timely submitted a request for reconsideration of the ED's decision. Mr. Young asserts that it is possible to meaningfully evaluate point source GHGs, and it is desirable and necessary to quantify, monetize, and eliminate GHG emissions. He is also concerned about the negative health effects posed by the projected level of particulate emissions, and states that there is no safe level of exposure for PM<sub>2.5</sub>. An evidentiary record on these issues would be necessary for OPIC to make a recommendation to the Commission on whether the ED's decision should be reconsidered. At this time OPIC is recommending a hearing, but prior to the development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision or remand of the application to the ED.

#### **V. Conclusion**

OPIC respectfully recommends the Commission grant the following hearing requests: City of Port Isabel, Town of Laguna Vista, Save RGV from LNG, Shrimpers and Fishermen of the RGV, and Marianne Poythress. We further recommend that all of the relevant and material issues listed above in Section III.F. be referred to the State Office of Administrative Hearings for a contested case hearing. OPIC also recommends the request for reconsideration be denied. Finally, if the Commission disagrees with OPIC's recommendations regarding affected persons and finds that none of the

requestors qualify, we recommend in the alternative that the Commission hold a hearing because the public interest warrants doing so.

Respectfully submitted,

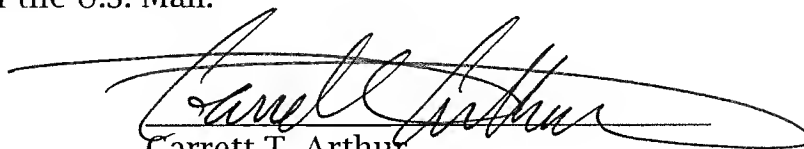
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By 

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## CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.



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